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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAY 12 2012

Uniform Issue List: 408.03-00

T: EP: RA: A2

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XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A	=	XXXXXXXXXXXXXXXXXX
IRA B	=	XXXXXXXXXXXXXXXXXX
Bank C	=	XXXXXXXXXXXXXXXXXX
Insurance Company D	=	XXXXXXXXXXXXXXXXXX
IRA E	=	XXXXXXXXXXXXXXXXXX
Financial Institution F	=	XXXXXXXXXXXXXXXXXX
Amount 1	=	XXXXXXXXXXXXXXXXXX
Amount 2	=	XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This is in response to your submission dated March 26, 2011, as supplemented by correspondence dated July 7, 2011 and April 2, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 78, represents that he received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) was due to the failure of

Page 2

Insurance Company F to follow Taxpayer A's instructions. Taxpayer A also represents that Amount 2 has not been used for any other purpose.

Taxpayer A represents that he owned IRA B, which was invested in a certificate of deposit (CD) maintained by Bank C. Upon maturity of the CD, Taxpayer A decided to invest in an IRA annuity with Insurance Company D. On September 9, 2010, Taxpayer A received a distribution of Amount 1 from IRA B in the form of a check made payable to Insurance Company D. On the same day, Insurance Company D deposited the check into an IRA annuity for Taxpayer A. Before the first annuity payment was received, Taxpayer A decided to cancel the annuity and was instructed by Insurance Company D to send a letter requesting cancellation which Taxpayer A mailed on October 28, 2010. It took several days for Insurance Company D to issue a refund, and Amount 1 was electronically transferred to Taxpayer A's checking account with Bank C on November 16, 2010. On November 19, 2010, after receiving word that the funds had been transferred, Taxpayer A deposited Amount 2 in IRA E with Financial Institution G. This was after the original 60-day rollover period. Documentation submitted includes a letter from Insurance Company E indicating that no Form 1099 was issued since Taxpayer A cancelled the annuity prior to receiving payments thus never consummated the attempted rollover.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount B in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408 (d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish timely rollover was due to the delay by Insurance Company E in following his cancellation instructions, which resulted in Amount 2 being deposited into IRA F on November 19, 2010, after the end of the original 60-day waiver period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Provided all other requirements of section 408(c)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution of Amount 2 into an IRA D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

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201231019

Page 4

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXXX (XXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose